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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 456

FEDERAL INTERMEDIATE CREDIT BANK OF COLUMBIA, SOUTH CAROLINA,
PETITIONER,

vs.

CHAS. S. MITCHELL, W. E. RICHARDSON, TRUCKERS SUPPLY COMPANY, AND SOUTH CAROLINA AGRICULTURAL CREDIT COMPANY, RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

NOTICE OF, MOTION AND PETITION FOR, AND BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

RANDOLPH MURDAUGH,
D. W. ROBINSON,
Attorneys for Petitioner.

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NOTICE.

IN THE

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PETITIONER,

vs.

CHAS. S. MITCHELL, W. E. RICHARDSON, TRUCKERS SUPPLY COMPANY, AND SOUTH CAROLINA AGRICULTURAL CREDIT COMPANY, RESPONDENTS.

To Messrs. W. J. Thomas and Buist & Buist, attorneys for Respondents in the above entitled action:

You are hereby notified that a petition for a writ of certiorari in the above entitled cause was filed in the Supreme Court of the United States on the .... day of .....A. D., 1927. A printed copy of the record and a printed copy of the petition and supporting brief are served upon you herewith.

RANDOLPH MURDAUGH,
D. W. ROBINSON,
Counsel for Petitioner.

Service accepted this ... day of ..... A. D., 1927.

.....

.....
Counsel for Respondents.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1927.

FEDERAL INTERMEDIATE CREDIT BANK, OF COLUMBIA, SOUTH CAROLINA,
PETITIONER,

vs.

CHAS. S. MITCHELL, W. E. RICHARDSON, TRUCKERS SUPPLY COMPANY, AND SOUTH CAROLINA AGRICULTURAL CREDIT COMPANY, RESPONDENTS.

MOTION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

Now comes Federal Intermediate Credit Bank of Columbia, S. C., plaintiff, petitioner, above named, by its counsel, and moves this Honorable Court that it will by certiorari or other proper process directed to the Honorable Judges of the United States Circuit Court of Appeals for the Fourth Circuit, require said Court to certify for its review and determination the certain cause in the said United States Circuit Court of Appeals, lately pending, wherein petitioner, Federal Intermediate Credit Bank of Columbia, was plaintiff in error, and

Chas. S. Mitchell, W. E. Richardson, Truckers Supply Company and South Carolina Agricultural Credit Company were defendants in error, and to that end it tenders herewith its petition and brief with a certified copy of the entire record in said cause in the United States Circuit Court of Appeals for the Fourth Circuit.

RANDOLPH MURDAUGH,
D. W. ROBINSON,
Counsel for Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

To the Honorable Supreme Court of the United States:

The petition of Federal Intermediate Credit Bank, plaintiff in error, respectfully shows to this Honorable Court:

(a) STATEMENT OF CASE.

That Petitioner commenced this action in the District Court of the United States for the Eastern District of South Carolina on August 31st, 1926, by filing and serving its summons and complaint praying for judgment against the defendants for the sum of Nine Thousand ($9,000.00) Dollars, with interest on Six Thousand ($6,000.00) Dollars thereof from July 11, 1926, at the rate of six and one-half (6½%) per cent, and interest on Three Thousand ($3,000.00) Dollars thereof from August 27, 1926, at the rate of eight per cent (8%) per annum, and ten per cent (10%) of the total amount as attorney's fees, and for costs and disbursements. Transcript, p. 6.

ISSUE—JURISDICTION, ONLY.

THE COMPLAINT sets forth:

(1) That the Plaintiff, the Federal Intermediate Credit Bank of Columbia, is a corporation organized under an act of Congress of the United States of America, with its principal place of business in the City of Columbia, State of South Carolina. Transcript, p. 2.

(2) and (3) That the defendants, Chas. S. Mitchell and W. E. Richardson, are citizens and residents of the State of South Carolina; and Truckers Supply Company and South Carolina Agricultural Credit Company are corporations organized under the laws of the State of South Carolina. Transcript, p. 2.

(4) That the cause of action is of a civil nature between Federal Intermediate Credit Bank and these defendants, respondents and corporations of the State of South Carolina, and that the matters in dispute, exclusive of interest and costs, exceed the sum of Three Thousand ($3,000.00) Dollars. Transcript, pp. 2 and 3.

The second cause of action is similar to the first, and involves a Three Thousand ($3,000.00) Dollar note, given by the same parties.

ANSWER. Admits Acts of Congress and paragraphs as to respondents and corporate existence of the defendants, and as to the execution of the note and the amount in dispute. Transcript, p. 8.

JURISDICTION. But the defendants, by way of further answer, especially challenge the jurisdiction of the Federal Court. Transcript, pp. 9-10. And the Certificate of District Judge Cochran shows this is the only

question involved. Transcript, p. 34. Opinion of C. C. A., p. 2.

There are also further answers setting forth various defenses to the notes, not having any special bearing on the question sought to be presented. Transcript, pp. 10-14.

(b) SUMMARY OF REASONS FOR CERTIORARI.

This case presents an issue of great public concern, is far reaching in its consequences and is of grave importance to the Government and to the other Intermediate Credit Banks, of which there are eleven in the United States, in that:

1. The Federal Intermediate Credit Banks, one and all, were organized under the Act of Congress, March 24, 1923, 42 Stat. L., 1454; and this was an amendment to and extension of Federal Farm Loan Act of 1916, 39 Stat. L. 360.

2. All of the capital stock of the Bank is owned by the United States Government, Sec. 205.

3. A proper construction of that portion of the Act, Sec. 201 (c), relating to jurisdiction, is that this clause relates to jurisdiction only in the sense of venue, the District in which to bring a suit by or against such a bank. This construction is reasonable and harmonizes the act with kindred acts, subsequent acts and the new U. S. Code.

4. There is nothing in the Act, either expressly or by clear implication, taking it out of the rule which ordinarily confers jurisdiction on a Federal Court.

5. This question has never been presented to or passed upon by any Federal Court other than by the decision from which we are now appealing.

6. The Act of Congress of Feb. 13, 1925, 43 Stat. L. 936, Sec. 12, does not take away, but recognizes this jurisdiction in the Federal Court; or if it be considered a general amendment and revision of the judicial Code on the question of jurisdiction, then it confers jurisdiction if it was not already in the Federal Court.

BRIEF IN SUPPORT OF APPLICATION FOR WRIT OF CERTIORARI.

1. The Federal Intermediate Credit Bank, being chartered under an act of Congress, any suit by or against it "arises under the * * * laws of the United States" and this confers jurisdiction on the Federal Court under the law. Act of March 3, 1875, Judicial Code, Sec. 24, sub-section first (a), Simpkins Fed. Practice, Revised edition, p. 401; *Osborne* v. *Bk.*, 9 Wheat. 805, 808, 819, 822-3; 6 L. Ed. 220, 224, and cases in Roses Notes, pp. 149, 169; *Bankers Trust Co.* v. *Tex. & P. R. Co.*, 241 U. S. 306-7; 60 L. Ed. 1014-15; *Amer. Bank & Trust Co.* vs. *Federal Reserve Bk.*, 256 U. S. 356-7; 65 L. Ed. 989; *Petri* vs. *Commercial Natl. Bank*, 148 U. S. 648; 35 L. Ed. 1144; *Sowell* vs. *Fed. Reserve Bk.*, 268 U. S. 453-6; 69 L. Ed. 1047-9; *Smith* vs. *Kansas City T. & T. Co.*, 255 U. S. 199; 65 L. Ed. 585.

The same rule and the same law applies where a subsidiary corporation is chartered by another which derives its authority to act and to charter the subsidiary corporation from an Act of Congress. *Rosenberg* vs. *U. S. Shipping Board Emergency Fleet Corp.*, 271 Fed. 956.

2. Jurisdiction being conferred by the general statutes and the Judicial Code, *any act limiting or taking away the jurisdiction* is to be *construed strictly* and the purpose to take away must appear *explicitly or by clear implication. Bankers Trust Co.* vs. *T. & P. R. Co.*, 241 U. S., pp. 306-7:60 L. Ed. 1014-15; Endlich on Interpre-

tation of Statutes, Sec. 151, 155; *Davies* vs. *Slocomb,* 263 U. S. 161; 68 L. Ed. 228; *Emlenton Refining Co.* vs. *Chambers,* 14 F. (2d) 105 (C. C. A. Pa.); 59 L. Ed. 299; *U. S.* vs. *Barnes,* 222 U. S. 520; 56 L. Ed. 293; *Anderson* vs. *Pac. Coast Steamship Co.,* 225 U. S. 198-9; 56 L. Ed. 1052-3.

3. The Government itself owns the Bank (42 Stat. L., p. 1454, Sec. 205), and the rule would apply in regard to relinquishing rights of the government, to-wit, that *nothing passes but what is conveyed in clear and explicit language. U. S.* vs. *Oregon & Cal. R. Co.,* 164 U. S. 539; 41 L. Ed. 544-5; *Caldwell* vs. *U. S.,* 250 U. S. 20-1; 63 L. Ed. 818.

4. EXAMPLES. By reference to the cases where Congress has limited or taken away the jurisdiction from its own courts, it will be seen that in either instance the act has been *clear and explicit.*

(a) Act of 1882, 22 Stat. L. 162-3, as to jurisdiction of suits by and against National Banks, provided: "*The jurisdiction* for suits hereafter brought * * * for National Banking Associations, except suits between them and the United States, or its officers or agents, *shall be the same as and not other than* the jurisdiction for suits by or against banks not organized under any law of the United States, which do or might do banking business where such National Banking Associations may be doing business, and such suits may be begun."

(b) The act of 1888, 25 Stat. L., p. 436, provides: "That all National Banking Associations shall * * * for the purpose of *all actions by or against them,* * * * be deemed *citizens of the states* in which they are respectively located; and * * * Courts *shall not have jurisdiction other than such as they would have in cases*

between individual citizens of the same State." Then follow certain exceptions.

(c) The Judicial Code, enacted in 1911, Sec. 24, giving jurisdiction to Federal Courts in sub-section sixteenth, provides: First, for jurisdiction in the Federal Court of certain classes of suits relating to National Banks. And then provides: "and all National Banking Associations * * * *for the purposes of all other actions by or against them,* * * * be deemed *citizens of the states in which they are respectively located."*

(d) Act of Jan. 28, 1915, 38 Stat. L. 804, took away the jurisdiction of Federal Courts as to railroad corporations chartered by Congress in this language: *"No Court* of the United States *shall have jurisdiction* of any action or suit by or against any railroad company *upon the ground* that the said railroad company *was incorporated under an act of Congress."*

(e) By the amendment to the Federal Employer's Liability Act of 1910, 36 Stat. 291, ch. 143, Congress provided among other things: *"No case arising under this act* and brought in any State Court of competent jurisdiction, *shall be removed to any Court of the United States."*

5. Act creating Federal Intermediate Credit Banks, 42 Stat. L., p. 1454, Sec. 201 (c) provides: "(c) Each Federal Intermediate Credit Bank shall have all the usual powers of corporations, and shall have power to sue and be sued both in law and equity, *and for purposes of jurisdiction shall be deemed a citizen of the State where it is located."*

A comparison of this act with the examples cited above under 4, shows that this section does not bear the clear and explicit meaning which is customary with all of the acts where the Federal Courts are deprived of a

jurisdiction which they would otherwise have. If the jurisdiction is taken away at all it is by implication and contrary to the rules in reference thereto laid down in *Bankers Trust Co.* vs. *T. & P. R. Co.;* Endlich on Interpretation of Statutes; *Emlenton Refining Co.* vs. *Chambers*, and the other cases cited above under 2.

But we respectfully submit that the reasonable interpretation of this sub-section of the Act is that it is referring to the location, venue (district) where a suit should be brought; and not the Court (Federal or State) in which it is to be brought.

This interpretation reconciles and harmonizes the act with the regular rules for interpretation of statutes, and with the other statutes limiting or taking away jurisdiction; and with this interpretation we are not forced to believe that a sovereign relinquishes one of its main attributes, that of passing on, preserving and protecting its own property rights, through its own judiciary.

Of course, it was necessary to have a location for the Bank in order to determine in what District of the Federal Courts it could and should sue. Judicial Code, Sec. 51; *Macon Grocery Co.* vs. *A. C. L. R. Co.,* 215 U. S. 508-9; 54 L. Ed. 304.

And this construction must seem the more reasonable when we consider that this, and each of the twelve Federal Intermediate Credit Banks were established for the purpose of operating in and serving the needs of several states, while their habitat or actual locations were necessarily in one state and in one Federal district.

6. *Hermann* vs. *Edwards,* 238 U. S. 111-12, 113, 116-18; 59 L. Ed. 1227-9. A careful examination of this case, in so far as it undertakes to take away the jurisdiction of the Federal Court based upon the interpretation of the clause "be deemed citizens of the States in which they are respectfully located" will show that the writer of the opinion considered the acts of 1882 and 1888,

which were clear and explicitly beyond question, as not repealed, but still subsisting with the re-enactment in sub-section sixteenth of Sec. 24 of the Judicial Code. These previous acts, together with the interpretation thereof, were considered by the court as a part of the law contained in the judicial code, and controlling on this question of jurisdiction.

The opinion also lays much emphasis upon the case of *Whittemore* vs. *Amoskeag National Bank*, 134 U. S. 529-30; 33 L. Ed. 1004. And this case was itself decided in 1890, after the act of 1882 and 1888, respectively, and based on these two statutes.

All the cases which we have found in which *Hermann* vs. *Edwards* was subsequently cited or discussed, will show that it is nowhere used for the purposes for which it is invoked here. See *Chesbrough* vs. *Woodworth*, 244 U. S. 78-9; 61 L. Ed. 1005; *Federal Reserve Bank of Dallas* vs. *Webster*, 287 F. 586 (D. C., N. D., Tex.); *Toledo Fence & Post Co.* vs. *Lyons*, 290 F. 644 (C. C. A., 6th Cir.); *Wegman* vs. *Hulse*, 13 F. (2d) 208 (D. C., W. D., N. Y.); *Davis* vs. *McFarland*, 15 F. (2d) 613 (C. C. A., Tex.).

7. Act of Feb. 13, 1925, 43 Stat. L. 936. This purports to be an act to amend the Judicial Code, and it does so in numerous and material respects. Sec. 12 would seem to further take away the jurisdiction of Federal Courts over Federal corporations, in addition to the previous acts, which are mentioned above under 4, and contains a sweeping provision on this subject. The proviso contained in it that it should not apply to any corporation, although incorporated by Act of Congress "wherein the Government of the United States is the owner of more than one-half of its capital stock", was clearly intended to preserve the inherent governmental quality of administering, protecting and passing upon the rights concerning its own property.

It is wide enough and clear enough to embrace Federal Intermediate Credit Banks. It does repeal and affect the general law conferring jurisdiction upon Federal Courts as to Federal corporations, as contained in Section 24 of the Judicial Code to the extent and only to the extent mentioned therein. See Sec. 13 of the same act.

We think the act of 1925, Sec. 12, is a clear recognition that the jurisdiction in Federal Courts exists in a case like ours, and if there was doubt about it, this very act, together with its general purpose is wide enough and broad enough to confer this jurisdiction.

REPEAL. Section 13 of the act is broad enough to and does repeal "all other Acts and parts of Acts in so far as they are embraced within and superseded by this Act, or are inconsistent therewith". This would repeal, if it existed, that portion of the Act of 1923, Sec. 201 (c), *in so far* and so far *only* as the term jurisdiction is used in a wider sense than venue or location of suit. And would leave it in force to that extent.

8. *U. S. Code*, 1925. It is suggested in the opinion of Circuit Judge Parker (opinion, p. 7) that the re-enactment or carrying forward in the new Code of Section 201, sub-section (c) is evidence that this section is still the law. It is *prima facie* or presumptive evidence that the section is still the law. But the Act of June 30, 1926, Public No. 440, enacting the Code, provides that the matter set forth in it shall establish *prima facie* the laws of the United States, and "In case of any inconsistency arising through omission or otherwise between the provisions of any section of this Code and the corresponding portion of legislation heretofore enacted, effect shall be given for all purposes whatsoever to such enactments."

This, we respectfully submit, leaves the Federal Intermediate Credit Bank Act, Sec. 201, Sub-sec. (c), to stand with and be limited and qualified by the Act of

1925, 43 Stat. L. 936, Sects. 12 and 13. See also Article by Frederic P. Lee and Middleton Beaman on Legal Status of the New Federal Code, American Bar Assoc. Journal for December, 1926.

We again reiterate that the only method of reconciling these statutes and the new Code and the decisions and Rules of Interpretation above referred to, is by limiting the word "jurisdiction" in the manner we have above pointed out.

Respectfully submitted,

RANDOLPH MURDAUGH,
D. W. ROBINSON,
Attorneys for Petitioner.